86-1910

No.

Supreme Court, U.S.
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

In re Thomas B. Hudgins and Billie E. Billman,

Petitioners

PETITION FOR WRIT OF MANDAMUS AND PROHIBITION TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND TO THE HONORABLE PATRICIA M. WALD, CHIEF JUDGE, THE HONORABLE HARRY T. EDWARDS, CIRCUIT JUDGE, AND THE HONORABLE KENNETH W. STARR, CIRCUIT JUDGE.

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Questions presented for review

1. Whether the statutory scheme for the collection of the federal individual income tax lacked subject matter jurisdiction over natural persons from 1975 through 1985.

2. Whether the court below erred (abused its discretion) in not taken judicial notice of the Federal Register and mandatory judicial notice of the adjudicative facts presented by petitioners.

3. Whether the instant cases should be vacated as moot and dismissed for lack of jurisdiction.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

In re Thomas B. Hudgins and Billie E. Billman,
Petitioners

PETITION FOR WRIT OF MANDAMUS AND PROHIBITION TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND TO THE HONORABLE PATRICIA M. WALD, CHIEF JUDGE, THE HONORABLE HARRY T. EDWARDS, CIRCUIT JUDGE, AND THE HONORABLE KENNETH W. STARR, CIRCUIT JUDGE.

Petitioners Hudgins and Billman, seaman and ship pilots for the Panama Canal Commission, hereby respectfully pray for a writ of mandamus to compel the lower court to comply with its original orders and take judicial notice of the Federal Register and take mandatory judicial notice of the adjudicative facts presented by petitioners. Petitioners also respectfully pray for a writ of prohibition to deny the sanctions imposed by the judgment of the Court of Appeals for the District of Columbia Circuit.

JUDGMENT BELOW

The judgement of the Court of Appeals of January 8, 1987 is not to be published, according to the judgment. The judgment is stamped: See local rule 8(f).

JURISDICTION TO REVIEW

The jurisdiction of this Court is invoked under Section 1651(a) of Title 28, United States Code.

The following decisions of this Court sustain jurisdiction to grant the writs requested. *De Beers Consol. Mines. Ltd. v. United States,* 325 U.S. 212, 217 (1945); *Roche v. Evaporated Milk Assn.,* 319 U.S. 21, 26 (1943); *LaBuy v. Howes Leather Co.,* 352 U.S. 249 (1957).

STATEMENT OF THE FACTS

1. Hudgins and Billman sued the IRS under the Freedom of Information Act, 5 USC 552, to publish the IRS Privacy Act and Paperwork Reduction Act notice (hereinafter NOTICE), in the Federal Register. *Hudgins and Billman v. IRS*, Cir. No. 85-5992 (D.C. Cir. Jan. 8, 1987). They also sued the IRS under the Freedom of Information Act to cite section 6012 IRC in their NOTICE as a private individual's (natural person's) requirement to disclose information on a federal individual income tax form. *Hudgins v. IRS,* Cir. No. 85-6065 (D.C. Cir. Jan. 8, 1987); *Billman v. IRS,* Cir. No. 85-6064 (D.C. Cir. Jan. 8, 1987). On appeal these lawsuits were combined for hearing by the Court Appeals for the D.C. Circuit and denied for failure to state a claim. Heavy sanctions were imposed for bringing frivolous suits. See judgment in *Hudgins and Billman v. IRS,* Cir. No. 85-5992 combined with Cir. Nos. 85-6064/6065 (D.C. Cir. Jan. 8, 1987), appendix A.

2. Hudgins held an (a)(2) judgment under the Freedom of Information Act from the District Court for the District of Columbia that ruled that "section 6012 clearly authorizes the IRS to require the filing of individual income tax returns." It was stated to be a complete response

to Hudgins' request under the Freedom of Information Act and the Privacy Act as the requirement for the private individual (natural person) to file a return. This judgment was the basis of the two FOIA lawsuits in item 1, above. See judgment in *Hudgins v. IRS, et. al.*, CA 84-1712 (DCDC, 1984), appendix B.

3. Although the IRS denied petitioners' claims as frivolous during the course of the appeal of the FOIA lawsuits in item 1, above, the IRS changed their jurisdictional disclosure regulation (NOTICE) for 1986 to cite section 6012 IRC as the requirement for private individuals (natural persons) to disclose information on federal individual income tax forms for the first time in the twelve year existence of the NOTICE. See new NOTICE for 1986, appendix C.

4. Emergency motions were filed by Hudgins and Billman during the course of the appeal for the Court of Appeals to take judicial notice of the Federal Register and for the Court to take mandatory judicial notice of the adjudicative facts presented. Orders were issued by the Court stating that judicial notice would be taken of the Federal Register and that mandatory judicial notice of the adjudicative facts would be taken. These orders were later denied as moot by the Court's judgment of January 8, 1987. The motions were declared frivolous. See Orders, appendixes D and E.

5. Hudgins and Billman petitioned for a rehearing with a suggestion for reharing en banc. Both were denied. See denial Orders, appendixes F and G.

REASONS FOR GRANTING THE WRITS

The statutory scheme for the collection of federal individual income taxes lacked subject matter jurisdiction

over natural persons (private individuals) from 1975 through 1985.

The NOTICE is the the jurisdictional disclosure regulation of the Internal Revenue Service. By failing to bring up the private individual (natural person) in section 6012 IRC within their jurisdictional disclosure regulation, as required by law (the Privacy Act at section (e)(3)(A) and the Treasury Department Privacy Act Regulation, 31 CFR and the Treasury Department Privacy Act Regulation, 31 CFR at section 1.35(b)(2)), the disclosure regulation was totally defective (lacked subject matter jurisdiction over natural persons). Section 6012 IRC is the only section of the Code that authorized the IRS to require the filing of individual tax returns under the Privacy Act of 1974. *Hudgins v. IRS, et. al.,* CA 84-1712, supra, wherein the court held, "Section 6012 clearly authorizes the IRS to require the filing of individual tax returns" under the Privacy Act and the Freedom of Information Act. If Hudgins and Billman were not informed of the statutory or regulatory requirement to disclose on a federal individual income tax form as required by law, no legal requirement existed for Hudgins or Billman to disclose information to the IRS under the law for the years 1975 through 1985.

While Hudgins and Billman were suing the Internal Revenue Service to cite section 6012 IRC in their NOTICE by the instant lawsuits, the Internal Revenue Service mooted this point and cited section 6012 IRC in their new jurisdictional disclosure regulation (NOTICE) for 1986 as the requirement for private individuals to disclose information on federal individual income tax forms for the first time since the implementation of the NOTICE in 1975. The NOTICE now complies with the Privacy Act at sec-

tion (e)(3)(A), the Treasury Department Privacy Act Regulation, 31 CFR 1.35(b)(2) and the legislative history to the Privacy Act, which clearly showed that Congress intended that the individual be informed by the agency of the statutory or regulatory requirement to disclose information when solicited. It is also in agreement with the (a)(2) Freedom of Information Act judgment rendered in *Hudgins v. IRS, et. al.,* CA 84-1712, supra which ruled on the merits of these points.

By citing section 6012 IRC in their NOTICE, the IRS has admitted (mooted the fact) that Hudgins and Billman stated a claim and has mooted or abated the judgment in *Hudgins and Billman v. IRS,* Cir. Nos. 85-5992, etc., supra. The IRS has mooted the fact whether or not there was a requirement to publish the previous NOTICE(s) in the Federal Register and has mooted the fact that the NOTICE should have cited section 6012 IRC as the private individual's (natural person's) requirement to disclose information on federal individual tax forms since its inception. Petitioners' position could not have been wholly without merit, as held by the lower court's judgment of January 8, 1987, if the IRS did what they were being sued to do notwithstanding declaring it frivolous.

All NOTICES in the Commissioner's Instruction Booklets to taxpayers each taxable year, prior to 1986, cited section 6001, 6011 and 6109 IRC as the legal authority to ask for information. Response under sections 6001 and 6011 was stated to be mandatory. But, sections 6001 and 6011 addressed the taxpayer (person liable or person made liable). The IRS NOTICE is required by law, the Privacy Act of 1974, to be addressed to the natural person or private individual. See section (e)(3)(A). The individual in the Privacy Act is a natural person. It does not address a

fictional person (taxpayer). *Florida Medical Ass'n v. Dept. of HEW,* 479 F. Supp. 1291, 1307-11 (M.D. Fla. 1979). The NOTICE was required by law to cite the statutory or regulatory requirement of the natural person. This point has already been ruled on the merits and confirmed in *Hudgins v. IRS, et. al.,* CA 84-1712, supra, wherein section 6012 IRC was held to be the requirement for the private individual (natural person) to disclose information on federal tax forms under the Privacy Act.

Whether or not Hudgins and Billman have or had a liability for a federal income tax is a new cause of action each taxable year. *Commissioner v. Sunnen,* 333 U.S. 591, 598 (1948). This point is reaffirmed by the fact that the IRS is required by statute, the Privacy Act at section (e)(3)(A), to issue its NOTICE each taxable year when soliciting information from private individuals (natural persons).

Since 1975, the requirement for an individual, U.S. citizen or lawfully admitted resident alien, to disclose information on a federal individual income tax return has been controlled by the Privacy Act of 1974. The statutory scheme for the collection of federal income taxes lacked subject matter jurisdiction over natural persons from 1975 through 1985. However, no circuit court in the United States will recognize this fact. All circuits declared the NOTICE to be adequate for Privacy Act compliance. Citizens are being or have been locked up in every circuit of the United States for not disclosing information on federal individual income tax forms for these years. An overwhelming usurpation of authority has been involved.

There has been an overwhelming abuse of discretion in the instant cases. The Court below ignored the judgment rendered in *Hudgins v. IRS, et al.,* CA 84-1712, *supra,*

and in effect, called it frivolous. The Court below created the case law that allows a citizen to sue an agency for sanctions under the (a)(1) (publish in the Federal Register) and (a)(2) (make information available) provisions of the Freedom of Information Act and then denied petitioners suits for failure to state a claim. *American Mail Line, Ltd. v. Gulick,* 411 F.2d 696, 701-02 (D.C. Cir. 1969). The Court below refused petitioners' motions to take judicial notice of the Federal Register, although required by law to do so, Federal Register Act, 44 USC 1507, and after issuing orders that it would. The judgment issued called the motion frivolous. The Court below also refused to take mandatory judicial notice of the adjudicative facts presented, although required by law to do so, under the Federal Rules of Evidence, 28 USC 2201(d), and (f), and after issuing orders that it would. The judgment, again, called the motion frivolous. An order was also issued by the Court below that misled Hudgins and Billman to think that they would get a fair hearing without an oral argument under the court's local rules. Local Rule 11(d)(3) was quoted from as the reason for not needing an oral argument. But only local Rule 11(d)(1) deals with frivolous issues. See Orders, appendices D, E and H and local Rule 11, appendix I.

Petitioners hold estoppel by judgment against the IRS in *Hudgins v. IRS, et al.,* CA 84-1712, *supra,* for the years 1975 through 1985. Hudgins went to court, under the Freedom of Information Act and obtained an (a)(2) judgment that revealed the proper jurisdictional disclosure authority under the Privacy Act for private individuals (natural pesons) to disclose information on federal individual tax returns; section 6012 IRC. Estoppel by judgment, or collateral estoppel, can estop a federal income tax liability. *Commissioner v. Sunnen, supra,* at 598. It is for this reason that the IRS changed their statutory

scheme, during the course of the appeal in the lower court, to include section 6012 IRC in their jurisdictional disclosure regulation (NOTICE).

This request for mandamus and prohibition action would correct the overwhelming abuse of discretion involved in the lower court's handling of the case. The Court refused to take judicial notice of the Federal Register as required by law, after issuing orders that it would, and issued a judgment mooting the order, with a judgment that is, itself, mooted or abated. The Court below also refused to take mandatory judicial notice of adjudicative facts after issuing an order that it would as required by law. Petitioners' position could not have been frivolous if the court below proceeded judicially in the matter and issued orders that it would take judicial notice of the Federal Register and mandatory judicial notice of the adjudicative facts presented by petitioners. The judgment of January 8, 1987 is, in effect, declaring the court's order of April 22, 1986, appendix D, and the court's order of September 15, 1986, appendix E, frivolous. Moreover, Hudgins and Billman's position could not have been frivolous if the government did what petitioners sued them to do with a lawsuit that is authorized for that purpose.

Where a ministerial duty devolves upon a judicial tribunal, and such tribunal construes it to be a judicial duty, and proceeds to act judicially in the matter, and then gives judgment against the party moving for such performance, and refuses to peform the duty, a mandamus lies to compel the performance. *Delaney v. Goddin,* 12 Gratt., [Va.] 266.

CONCLUSION

For the foregoing reasons, petitioners pray:

1. That a writ of mandamus issue from this Court to the Court of Appeals for the D.C. Circuit, and to the honorable judges mentioned above, to take judicial notice of the Federal Register and to take mandatory judicial notice of the adjudicative facts presented by petitioners, as the original orders of the Court of Appeals declared the court would do.

2. That a writ of prohibition issue denying the sanctions imposed by the judgment of January 8, 1987.

3. That petitioners be granted a sixty-day (60) extension of time to apply for statutory certiorari from the time of completion of action on this petitioin.

Respectfully submitted,

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APPENDIX A

NOT TO BE PUBLISHED - SEE LOCAL RULE 8(f)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-5922 **September Term, 1986**

Thomas B. Hudgins, and Billie E. Billman,
Appellants

v.

Internal Revenue Service

C.A. No. 84-03830

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Before: WALD, Chief Judge; EDWARDS and STARR, Circuit Judges

JUDGMENT

This cause came to be heard on the record on appeal from the United States District Court for the District of Columbia and briefs were filed by the parties. The issues have been accorded full consideration by the court, and occasion no need for a published opinion. *See* Local Rule 13(c).

On consideration thereof, it is

ORDERED and **ADJUDGED** by the court that the district court's order of August 6, 1985 be affirmed for the reasons set forth in the accompanying memorandum. It is

FURTHER ORDERED by the court that the motions filed by appellants are dismissed as moot. It is

FURTHER ORDERED by the court, on its own motion, that sanctions be imposed on appellants in the amount of $1,500.00. The appellee has stated that the average cost for litigating such cases is $1,246.00. In light of the number of motions filed by appellants and the extensive briefs submitted by appellee, we are certain that the appellee's expenses in litigating this case are well above its average costs. Moreover, the amount of the sanction is below the double costs we are authorized to impose under Rule 38 of the Federal Rules of Appellate Procedure.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* Local Rule 14.

Per Curiam

No. 85-5992 - *Hudgins, et al. v. IRS*

MEMORANDUM

The issue before this court is whether the district court erred in dismissing appellants' case for failure to state a claim under the Freedom of Information Act. 5 U.S.C. § 552. This appeal and the related case, docket Nos. 85-6064 and 85-6065, represent the culmination of three of six cases filed in the United States District Court for the District of Columbia which challenge federal income taxation under the FOIA and/or the Privacy Act. We affirm the orders of the district court.

Appellants allege that the Privacy Act notices on the Internal Revenue Service's tax forms are defective. Under the Freedom of Information Act, they seek an order compelling the IRS to produce proper Privacy Act notices. In particular, appellants claim that the tax forms improperly state that disclosure of one's social security number is mandatory. Appellants claim that because the federal income tax system is voluntary and because the notice provisions do not state all of the authority underlying the requirements of the Privacy Act and do not qualify as substantive rules under the Administrative Procedure Act, 5 U.S.C. § 5572(a)(1)(D), the disclosure of one's social security number on the tax forms is voluntary.

Insofar as a violation of the Federal Income Tax laws can trigger penalties, it is nonsensical to argue that compliance is "voluntary." The authority for requiring disclosure of one's social security number on the IRS tax forms is set forth in the Internal Revenue Code, particularly sections 6001, 6011, 6019, and 6012. These forms need not qualify as substantive rules under the APA to be valid and enforceable. The requirement which the APA

imposes is that the Federal Register contain information as to where the notices can be obtained. 5 U.S.C. § 5572(a)(1)(D). Furthermore, the statutory authority for disclosure which appears in notices is adequate for the purposes of Privacy Act compliance.

The underlying rationale for appellants' claim is wholly without merit, a fact of which appellants should be aware given the disposition of their prior cases. Nevertheless, they repeatedly bring the same issue before the courts and inundate us with frivolous motions. Appellants' case is nothing more than, to use the words of Judge Oberdorfer, a "thinly disguised suit" for a decision which would have the effect of exempting them from tax liability. *Hudgins v. IRS,* 54 A.F.T.R. 6408 (D.D.C. Sept. 20, 1984), *aff'd,* No. 84-5720, unpublished order (D.C. Cir. May 14, 1985). Therefore, we have imposed sanctions on appellants in the amount of $1,500.00 in this case. We have also sanctioned appellants for the amount of $1,500.00 in the related case, Docket Nos. 85-6064 and 85-6065.

FILED
JAN 8 1987
UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit
George A. Fisher
Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS B. HUDGINS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action
	)	No. 84-1712
INTERNAL REVENUE SERVICE, *et al.*,	)	
	)	
	)	
Defendants.	)	
	)	

JUDGMENT

This action comes before the Court on defendant's motion for judgment on the pleadings. The plaintiff has opposed this motion.

Pursuant to the Freedom of Information Act and the Privacy Act, the plaintiff requested the Internal Revenue Service (IRS) to produce the statute or Executive Order that authorizes the Government to require the filing of individual tax returns. In response, the IRS supplied a copy of IRC § 6012, as well as copies of several other Code provisions. Plaintiff finds this response unsatisfactory because, he claims, the sections provided do not *require* private individuals to file. He therefore seeks an order compelling the IRS to produce the requested information. Plaintiff's argument is without merit. Section 6012 clearly authorizes the IRS to require the filing of individual tax returns. *See United States v. Drefke,* 707 F.2d 978, 981 (8th Cir.), *cert. denied,* 104 S.Ct. 359 (1983). It is

therefore a complete response to plaintiff's request. Accordingly, it is this 1st day of September, 1984, hereby

ORDERED: that defendant's motion for judgment on the pleadings should be, and hereby is, GRANTED; and it is further

ORDERED: that the plaintiff's complaint should be, and hereby is, DISMISSED.

/s/ Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

FILED
SEP 10 1984
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

Privacy Act and Paperwork Reduction Act Notice

The Privacy Act of 1974 and Paperwork Reduction Act of 1980 say that when we ask you for information, we must tell you: our legal right to ask for the information; what major purposes we have in asking for it and how it will be used; what could happen if we do not receive it; and whether your response is voluntary, required to obtain a benefit, or mandatory under the law.

For the Internal Revenue Service, the laws include tax returns and any papers filed with them and any questions we need to ask you so we can complete, correct, or process your return; figure your tax; and collect tax, interest, or penalties.

Our legal right to ask for information is Internal Revenue Code sections 6001, 6011, and 6012(a) and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Your response is mandatory under these sections. Code section 6109 and its regulations say that you must show your social security number on what you file. This is so we know who you are, and can process your return and papers. You must fill in all parts of the tax form that apply to you. But you do not have to check the boxes for the Presidential Election Campaign Fund.

We ask for tax return information to carry out the Internal Revenue laws of the United States. We need it to figure and collect the right amount of tax.

We may give the information to the Department of Justice and to other Federal agencies, as provided by law. We may also give it to cities, states, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. And we may give it to foreign governments because of tax treaties they have with the United States.

If you do not file a return, do not provide the information we ask for, or provide fraudulent information, the law provides that you may be charged penalties and, in certain cases, you may be subject to criminal prosecution. We may also have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on the tax return. This could make the tax higher or delay any refund. Interest may also be charged.

Please keep this notice with your records. It may help you if we ask you for other information. If you have questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

1986 Earned Income Credit Table

Caution: This Is Not a Tax Table

To find your earned income credit: Read down the column titled "If line 3 or 4 of the worksheet is — " and find the appropriate amount from the Earned Income Credit Worksheet on page 16. Read across to the right and find the amount of the earned income credit. Enter that amount on line 5 or 6 of the worksheet, whichever applies.

If line 3 or 4 of the worksheet is—		Your earned income credit is—	If line 3 or 4 of the worksheet is—		Your earned income credit is—	If line 3 or 4 of the worksheet is—		Your earned income credit is—	If line 3 or 4 of the worksheet is—		Your earned income credit is—	If line 3 or 4 of the worksheet is—		Your earned income credit is—
Over	But not over		Over	But not over		Over	But not over		Over	But not over		Over	But not over	
$0	$50	$3	$2,000	$2,050	$223	$4,000	$4,050	$443	$7,450	$7,500	$431	$9,450	$9,500	$186
50	100	8	2,050	2,100	228	4,050	4,100	448	7,500	7,550	425	9,500	9,550	180
100	150	14	2,100	2,150	234	4,100	4,150	454	7,550	7,600	419	9,550	9,600	174
150	200	19	2,150	2,200	239	4,150	4,200	459	7,600	7,650	413	9,600	9,650	168
200	250	25	2,200	2,250	245	4,200	4,250	465	7,650	7,700	406	9,650	9,700	162
250	300	30	2,250	2,300	250	4,250	4,300	470	7,700	7,750	400	9,700	9,750	156
300	350	36	2,300	2,350	256	4,300	4,350	476	7,750	7,800	394	9,750	9,800	150
350	400	41	2,350	2,400	261	4,350	4,400	481	7,800	7,850	388	9,800	9,850	144
400	450	47	2,400	2,450	267	4,400	4,450	487	7,850	7,900	382	9,850	9,900	138
450	500	52	2,450	2,500	272	4,450	4,500	492	7,900	7,950	376	9,900	9,950	131
500	550	58	2,500	2,550	278	4,500	4,550	498	7,950	8,000	370	9,950	10,000	125
550	600	63	2,550	2,600	283	4,550	4,600	503	8,000	8,050	364	10,000	10,050	119
600	650	69	2,600	2,650	289	4,600	4,650	509	8,050	8,100	358	10,050	10,100	113
650	700	74	2,650	2,700	294	4,650	4,700	514	8,100	8,150	351	10,100	10,150	107
700	750	80	2,700	2,750	300	4,700	4,750	520	8,150	8,200	345	10,150	10,200	101
750	800	85	2,750	2,800	305	4,750	4,800	525	8,200	8,250	339	10,200	10,250	95
800	850	91	2,800	2,850	311	4,800	4,850	531	8,250	8,300	333	10,250	10,300	89
850	900	96	2,850	2,900	316	4,850	4,900	536	8,300	8,350	327	10,300	10,350	83
900	950	102	2,900	2,950	322	4,900	4,950	542	8,350	8,400	321	10,350	10,400	76
950	1,000	107	2,950	3,000	327	4,950	5,000	547	8,400	8,450	315	10,400	10,450	70
1,000	1,050	113	3,000	3,050	333	5,000	6,500	550	8,450	8,500	309	10,450	10,500	64
1,050	1,100	118	3,050	3,100	338	6,500	6,550	547	8,500	8,550	303	10,500	10,550	58
1,100	1,150	124	3,100	3,150	344	6,550	6,600	541	8,550	8,600	296	10,550	10,600	52
1,150	1,200	129	3,150	3,200	349	6,600	6,650	535	8,600	8,650	290	10,600	10,650	46
1,200	1,250	135	3,200	3,250	355	6,650	6,700	529	8,650	8,700	284	10,650	10,700	40
1,250	1,300	140	3,250	3,300	360	6,700	6,750	523	8,700	8,750	278	10,700	10,750	34
1,300	1,350	146	3,300	3,350	366	6,750	6,800	516	8,750	8,800	272	10,750	10,800	28
1,350	1,400	151	3,350	3,400	371	6,800	6,850	510	8,800	8,850	266	10,800	10,850	21
1,400	1,450	157	3,400	3,450	377	6,850	6,900	504	8,850	8,900	260	10,850	10,900	15
1,450	1,500	162	3,450	3,500	382	6,900	6,950	498	8,900	8,950	254	10,900	10,950	9
1,500	1,550	168	3,500	3,550	388	6,950	7,000	492	8,950	9,000	248	10,950	10,999	3
1,550	1,600	173	3,550	3,600	393	7,000	7,050	486	9,000	9,050	241			
1,600	1,650	179	3,600	3,650	399	7,050	7,100	480	9,050	9,100	235	**$11,000 or more—you cannot take the credit**		
1,650	1,700	184	3,650	3,700	404	7,100	7,150	474	9,100	9,150	229			
1,700	1,750	190	3,700	3,750	410	7,150	7,200	468	9,150	9,200	223			
1,750	1,800	195	3,750	3,800	415	7,200	7,250	461	9,200	9,250	217			
1,800	1,850	201	3,800	3,850	421	7,250	7,300	455	9,250	9,300	211			
1,850	1,900	206	3,850	3,900	426	7,300	7,350	449	9,300	9,350	205			
1,900	1,950	212	3,900	3,950	432	7,350	7,400	443	9,350	9,400	199			
1,950	2,000	217	3,950	4,000	437	7,400	7,450	437	9,400	9,450	193			

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-5992 **September Term, 1985**

Thomas B. Hudgins and Billie E. Billman, Appellants — Civil Action 84-03830

v.

Internal Revenue Service

85-6064

Billie E. Billman, Appellant — Civil Action 85-01014

v.

Internal Revenue Service

And Consolidated Case No. 85-6065

ORDER

Upon consideration of appellants' emergency motions for judicial notice of the Federal Register, and it appearing that the above captioned cases present related issues, it is

ORDERED, *sua sponte,* that No. 85-5992 and Nos. 85-6064 and 85-6065 shall be scheduled for oral argument on the same day and before the same panel. And, it is

FURTHER ORDERED that appellants' emergency motions for judicial notice of the Federal Register are hereby referred to the division of this Court ultimately assigned to consider and decide this case on the merits.

FOR THE COURT:

GEORGE A. FISHER, Clerk

By: /s/ Trisha E. Hall
Trisha E. Hall
Deputy Clerk

United States Court of Appeals
For The District of Columbia Circuit
FILED APR 22 1986
GEORGE A. FISHER
Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-5992 **September Term, 1985**

CA 84-03830

Thomas B. Hudgins and
Billie E. Billman,
Appellants

v.

Internal Revenue Service

No. 85-6064

Billie E. Billman,
Appellant

v.

Internal Revenue Service

And Consolidated Case No. 85-6065

ORDER

Upon consideration of appellants' emergency motion for mandatory judicial notice of adjudicative facts and emergency motion for permanent injunctions against appellee, it is

ORDERED that the aforesaid motions are referred to the division of this Court ultimately assigned to consider and decide the above-captioned appeals on the merits.

FOR THE COURT:

GEORGE A. FISHER, Clerk

By: /s/ Virginia C. McCray
Virginia C. McCray
Deputy Clerk

United States Court of Appeals
For The District of Columbia Circuit
FILED SEP 15 1986
GEORGE A. FISHER
Clerk

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-5992 **September Term, 1986**

Thomas B. Hudgins and
Billie E. Billman,

v.

Internal Revenue Service

CA No. 84-03830

BEFORE: **WALD,** Chief Judge; **EDWARDS** and **STARR,** Circuit Judges

ORDER

Upon consideration of appellants' petition for rehearing, it is

ORDERED, by the Court, that the petition is denied.

Per Curiam

FOR THE COURT:
GEORGE A. FISHER, CLERK

BY: /s/ Robert A. Bonner
Robert A. Bonner
Chief Deputy Clerk

United States Court of Appeals
For The District of Columbia Circuit
FILED MAR 10 1987
GEORGE A. FISHER
Clerk

APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-5992 **September Term, 1986**

Thomas B. Hudgins and
Billie E. Billman,

v.

Internal Revenue Service

CA No. 84-03830

BEFORE: Wald, Chief Judge; Robinson, Mikva, Edwards, Ruth B. Ginsburg, Bork, Starr, Silberman, Buckley, Williams and D.H. Ginsburg, Circuit Judges

ORDER

Appellants' suggestion for rehearing *en banc* has been circulated to the full Court. No member of the Court requested the taking of a vote thereon. Upon consideration of the foregoing, it is

ORDERED, by the Court *en banc* that appellants' suggestion is denied.

Per Curiam

FOR THE COURT:
GEORGE A. FISHER, CLERK

BY: /s/ Robert A. Bonner
Robert A. Bonner
Chief Deputy Clerk

United States Court of Appeals
For The District of Columbia Circuit
FILED MAR 10 1987
GEORGE A. FISHER
Clerk

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-5992 **September Term, 1986**

Thomas B. Hudgins and
Billie E. Billman,
Appellants

C.A. No. 84-03830

v.

Internal Revenue Service

BEFORE: Wald, Chief Judge;
Edwards and Starr, Circuit Judges

ORDER

The court concludes, on its own motion, that oral argument will not assist the court in this case. Accordingly, the court will dispose of the appeal without oral argument on the basis of the facts and legal arguments presented in the briefs and record. *See* D.C. Cir. R. 11(d).

Per Curiam

United States Court of Appeals
For The District of Columbia Circuit
FILED DEC 4 1986
GEORGE A. FISHER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-6064 **September Term, 1986**

Billie E. Billman, C.A. No. 85-01014
Appellant C.A. No. 85-00865

v.

Internal Revenue Service

And Consolidated Case No. 85-6065

BEFORE: Wald, Chief Judge;
Edwards and Starr, Circuit Judges

ORDER

The court concludes, on its own motion, that oral argument will not assist the court in this case. Accordingly, the court will dispose of the appeal without oral argument on the basis of the facts and legal arguments presented in the briefs and record. *See* D.C. Cir. R. 11(d).

Per Curiam

United States Court of Appeals
For The District of Columbia Circuit
FILED DEC 4 1986
GEORGE A. FISHER
Clerk

RULE 11

CALENDARING CASES

(a) *Clerk to Prepare Calendar.* The Clerk shall prepare calendars of cases for the regular sessions of this Court, placing thereon, in proper numerical order, only cases in which the briefs upon both sides have been filed or will be due 7 days before the beginning of the session, unless otherwise ordered by the Court.

(b) *Advancement of Date for Hearing.* The Court may, on motion or *sua sponte,* advance the date for the hearing of any case, motion or petition, and may allow the filing of typewritten, mimeographed or photocopied briefs, in lieu of printed briefs, in cases advanced for hearing.

(c) *Continuance of Hearing.* When a case has been set for hearing, it may not be continued by stipulation of the parties or their counsel, but only by an order of the Court on a motion promptly filed and for good cause shown.

(d) *Disposition Without Oral Argument.* Whenever the Court, *sua sponte* or on suggestion of a party, concludes that oral argument will not be needed, it may, after causing notice to be given by the Clerk to the parties of that determination, proceed to dispose of the case without oral argument. The determination that a case is to be decided without oral argument must be unanimously made by a three-judge division of the Court after due consideration of the following factors, and any others thought appropriate in the context of the particular case: (1) the appeal is frivolous; or (2) the dispositive issue or set of issues has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record and oral argument would not significantly aid the Court. Motions for restoration to the argument calendar may be made within five days of the date of the order ad-

vising counsel of this Court's determination that the case is to be decided without oral argument. Counsel should be aware, however, that the Court thoroughly evaluated the case before issuance of the order.